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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/674,007	09/29/2003	John E. Longnecker	DDC 0559 PUS/02-1-127	2390
22045	7590	08/19/2004	EXAMINER	
BROOKS KUSHMAN P.C. 1000 TOWN CENTER TWENTY-SECOND FLOOR SOUTHFIELD, MI 48075			TRIEU, THAI BA	
			ART UNIT	PAPER NUMBER
			3748	

DATE MAILED: 08/19/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/674,007

Applicant(s)

LONGNECKER ET AL.

Examiner

Thai-Ba Trieu

Art Unit

3748

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 01 July 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) 1-3 and 11-16 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 4-8 and 10 is/are rejected.
- 7) ☒ Claim(s) 9 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- 1) ☐ Certified copies of the priority documents have been received.
  - 2) ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date: \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

### **DETAILED ACTION**

This Office Action is in response to the Amendment filed on July 01, 2004. Claims 4, 6-7, and 9-10 were amended.

Applicant's cooperation in correcting the minor informalities and in amending the claims to overcome the claim objections relating to informalities as well as indefinite claim language is appreciated.

Applicant's arguments, see Pages 7-10, filed July 01, 2004, with respect to the rejection(s) of claim(s) 4-6 under 35 U.S.C. 102(b) as being anticipated by Moody et al. (Patent Number 4,671,068), and to the rejection(s) of claim(s) 4-8 and 10 under 35 U.S.C. 102(b) as being anticipated by Weisman, II et al. (Patent Number 5,987,888), have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is set forth below.

#### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

***Claims 4-8 and 10 are rejected under 35 U.S.C. 102(e) as being anticipated by Wang et al. (Pub. Number US 2003/0182/048 A1 ).***

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Wang disclose a method for controlling an internal combustion engine having a variable geometry turbocharger (VGT) (26) to provide a boost pressure at an engine intake, the VGT having a boost pressure sensor, the method comprising:

calculating a feedforward VGT geometry command to provide a desired boost pressure (See Paragraph [0030]);

monitoring whether the boost pressure sensor has failed (See Paragraphs [0017] and [0033]);

calculating an adjusted VGT geometry command based at least partially on feedback from the boost pressure sensor, wherein the adjusted VGT geometry command comprising adjusting the feedforward VGT geometry command, and setting the VGT geometry according to the adjusted command if the boost pressure sensor has not failed (See Paragraphs [0026], [0032], and from [0035] to [0043]);

setting the VGT geometry according to the feedforward VGT geometry command if the boost pressure sensor has failed (See paragraph [0041], [0042] and [0043]);

wherein the feedforward VGT geometry command being calculated from an engine speed and a demanded engine torque (See paragraphs [0018] and [0034])

wherein the VGT is a variable nozzle turbocharger (26) having movable vanes to vary the geometry; and the feedforward VGT geometry command is expressed as a command to open the vanes (via actuator 94) (See Paragraphs [0046] to [0049]).

**Regarding claims 7-8 and 10**, Wang discloses a method for controlling an internal combustion engine having a variable geometry turbocharger (VGT) to provide a boost pressure at an engine intake, the variable geometry turbocharger having a turbine shaft, a boost pressure sensor, and a turbo speed sensor for measuring a rotational speed of the turbine shaft, the method comprising:

calculating a feedforward VGT geometry command to provide a desired boost pressure (See Paragraph [0030]);

calculating an adjusted VGT geometry command based at least partially on feedback from the boost pressure sensor (58, and line 60), wherein the adjusted VGT geometry command comprises an adjustment to the feedforward VGT geometry command (See Paragraph [0065]);

monitoring whether the turbo speed sensor has failed (See paragraph [0066]);

setting a VGT geometry according to the adjusted VGT geometry command, if the turbo speed sensor has not failed; and if adjustment to the feedforward command would not increase the rotational speed of the turbine shaft (See Paragraph [0067]); and

setting the VGT geometry according to the feedforward VGT geometry command if the adjustment to the feedforward VGT geometry command would increase the rotational speed of the turbine shaft, the turbo speed sensor has failed (See Paragraphs from[0069] to [0076]);

wherein the feedforward VGT geometry command is calculated from an engine speed and a demanded engine torque; and limiting a maximum available engine torque, if the turbo speed sensor has failed (See Paragraph [0070]).

***Allowable Subject Matter***

Claim 9 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.


***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thai-Ba Trieu whose telephone number is (703) 308-6450. The examiner can normally be reached on Monday - Thursday (6:30-5:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas E. Denion can be reached on (703) 308-2623. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

TTB  
August 15, 2004

  
Thai-Ba Trieu  
Patent Examiner  
Art Unit 3748